

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

PA

W. T. SNIPES,

Petitioner(s),

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

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Docket No. 27902-15 L.

ORDER

This case is calendared for the trial session in Atlanta, Georgia, commencing on December 5, 2016. This section 6330(d)¹ case is before the Court on the parties' cross motions for summary judgment. Respondent filed a motion for summary judgment on August 1, 2016, and petitioner responded to the motion on September 7, 2016. Petitioner filed a motion for summary judgment on September 7, 2016, and respondent filed a response on September 30, 2016.

This case involves petitioner's challenge to a notice of determination sustaining the notice of the filing of a federal tax lien with respect to petitioner's income tax liabilities for tax years 2001, 2003, 2004, 2005, and 2006. Petitioner is a movie actor and owner of film and entertainment companies.

Background

On September 4, 2013, petitioner timely filed a Request for Due Process hearing, requesting a collection due process hearing and seeking an offer-in-compromise or installment agreement as collection alternatives. On January 8, 2014, the settlement officer scheduled a hearing for February 10, 2014, and requested a completed Form 433-A, Collection Information Statement for Individuals, along with supporting documentation. Petitioner requested a delay in the hearing in order to submit an offer-in-compromise. On or about April 3, 2014, the settlement officer received an offer-in-compromise, based on doubt as to collectability, offering \$842,061 as a lump sum to compromise petitioner's liabilities of more than \$29 million. A face-to-face hearing was held on June 18, 2014.

Many of petitioner's assets are owned through trusts or multiple entities. The settlement office requested field courtesy investigations of assets to assist in her determination of petitioner's reasonable collection potential. On August 27, 2015, the settlement officer

¹Section reference are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

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concluded that petitioner has a reasonable collection potential of \$17,482,152, but petitioner did not increase his offer in compromise. Respondent sent petitioner a notice of determination concerning collection actions under section 6320 and/or 6330 on October 6, 2015. The legal and administrative review, which accompanied the notice of determination includes references to projected income.

Petitioner contends that the settlement officer's calculation of his reasonable collection potential erroneously included double counting of assets, lost assets, properties secured to creditors, and debt payments. Petitioner further contends that he remains committed to satisfying all current ongoing tax obligations. He asks for an accurate determination of reasonable collection potential.

Discussion

Summary judgment may be granted where the pleadings and other materials show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). Respondent, as the moving party bears the burden of proving that there is no genuine dispute as to any material fact and that he is entitled to judgment as a matter of law. FPL Grp., Inc. & Subs. v. Commissioner, 116 T.C. 73, 74-75 (2001). In considering a motion for summary judgment, evidence is viewed in the light most favorable to the nonmoving party. Bond v. Commissioner, 100 T.C. 32, 36 (1993). The nonmoving party may not rest upon the mere allegations or denials of his or her pleading but must set forth specific facts showing there is a genuine dispute for trial. Sundstrand Corp. v. Commissioner, 98 T.C. at 520. The events described by petitioner in the petition and in petitioner's motion for summary judgment differ from the events describe by respondent in the notice of determination and respondent's motion for summary judgment. Consequently, we conclude that there is a genuine dispute as to material facts regarding respondent's determination of petitioner's reasonable collection potential and therefore, a decision cannot be rendered as a matter of law.

The facts and the reasons given in the notice of determination are inadequate for us to determine whether the settlement officer abused her discretion in evaluation, in the light of all relevant consideration, petitioner's reasonable collection potential. The Court can remand a case to respondent's Appeals Office to clarify and supplement the administrative record as appropriate. See Wadleigh v. Commissioner, 134 T.C. 280, 299 (2010). The hearing on remand provides the parties with the opportunity to complete the initial hearing while preserving the taxpayer's right to receive judicial review of the supplemental determination. See Hoyle v. Commissioner 136 T.C. 463, 467-468 (2011).

Premises considered, it is

ORDERED that respondent's motion for summary judgment, filed August 1, 2016, is denied. It is further

ORDERED that petitioner's motion for summary judgment, filed September 7, 2016, is denied. It is further

ORDERED that this case is stricken for trial from the Court's December 5, 2016, trial session in Atlanta, Georgia and that the undersigned judge retains jurisdiction. It is further

ORDERED that this case is remanded to respondent's Appeals Office for the purpose of conducting a hearing to supplement the record and consider petitioner's reasonable collection potential in light of petitioner's current circumstances. It is further

ORDERED that the hearing shall take place at a reasonable and mutual agreed upon date and time, but no later than December 5, 2016. It is further

ORDERED that the parties shall file a joint status report on or before January 4, 2017.

**(Signed) Kathleen Kerrigan
Judge**

Dated: Washington, D.C.
October 6, 2016